

**Before the  
Federal Communications Commission  
WASHINGTON, D.C. 20554**

In the Matter of	)	File No. EB-08-SE-025
	)	NAL/Acct. No. 200832100057
ABS-CBN International, Inc.	)	FRN # 0014189526

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 16, 2008**

**Released: July 18, 2008**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau

**I. INTRODUCTION**

1. In this *Notice of Liability for Forfeiture*, we find ABS-CBN International, Inc. ("ABS-CBN"), former licensee of Fixed Satellite Service earth station E970116,<sup>1</sup> apparently liable for a forfeiture in the amount of five thousand two hundred dollars (\$5,200) for operating its earth station without Commission authority and for failing to file a timely renewal application for its earth station in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act")<sup>2</sup> and Sections 25.102(a) and 25.121(e) of the Commission's Rules ("Rules").<sup>3</sup>

**II. BACKGROUND**

2. On September 19, 2006, ABS-CBN was granted a license modification for its earth station, call sign E970116, which provided authorization for an 11-meter C-band antenna and 7.6-meter Ku-band antenna.<sup>4</sup> Under the terms of the license, ABS-CBN's authorization for the subject earth station expired on April 23, 2007. On November 1, 2007, ABS-CBN filed a modification application for another earth station, call sign E000584, to, among other things, re-license the antennas previously associated with earth station E970116.<sup>5</sup> The International Bureau granted ABS-CBN's modification application for earth station E000584 on January 23, 2008.<sup>6</sup>

3. Because it appeared that ABS-CBN operated earth station E970116 without authorization, the International Bureau referred this case to the Enforcement Bureau's Spectrum Enforcement Division ("Division") for investigation and possible enforcement action. The Division

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<sup>1</sup> File No. SES-MOD-20060801-01298.

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> 47 C.F.R. §§ 25.102(a) and 25.121(e).

<sup>4</sup> See *Satellite Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-00857 (IB rel. Sept. 20, 2006). ABS-CBN was granted a ten-year license to operate earth station E970116 on April 23, 1997. See SES-LIC-19970113-00035.

<sup>5</sup> File No. SES-MFS-20071101-01487.

<sup>6</sup> See *Satellite Communications Services Information Re: Actions Taken*, Public Notice, Report No. SES-01003 (IB rel. Jan. 30, 2008). The license modification was granted without prejudice to any future Commission enforcement action against the corporation in connection with any unauthorized operation of its radio facilities.

issued ABS-CBN a letter of inquiry ("LOI") on February 11, 2008.<sup>7</sup>

4. In its March 6, 2008, Response to the LOI,<sup>8</sup> ABS-CBN admits that it continuously operated earth station E970116 between April 23, 2007, the expiration date of the license, and January 23, 2008. ABS-CBN states that it inadvertently allowed the license for earth station E970116 to lapse, and that it first became aware of the expiration of the subject earth station license on July 9, 2007. On July 12, 2007, when it learned from the International Bureau that its license for earth station E970116 could not be reinstated, ABS-CBN asserts that it initiated a frequency coordination procedure for the antennas covered by the lapsed license. On November 1, 2007, upon completion of the frequency coordination process, ABS-CBN filed a modification application for an existing earth station license, E000584, to among other things, re-license the antennas previously associated with E970116. On January 23, 2008, the International Bureau granted ABS-CBN's modification application for earth station E000584.

5. Also in its Response, ABS-CBN requests that we forego assessing a forfeiture in this case, or alternatively, assess a forfeiture that is substantially less than the base forfeiture amount established in Section 1.80 of the Commission's Rules.<sup>9</sup> In arguing for mitigation, ABS-CBN states that until the instant proceeding, it continuously operated all of its earth stations in full compliance with the Commission's rules and has never been subject to a Commission enforcement action related to the operation of its earth stations. ABS-CBN also asserts that during the period of unauthorized operation it did not create any interference with other licensees. Further, ABS-CBN argues that it promptly disclosed to the International Bureau that its license for earth station E970116 had lapsed, and remedied the violation prior to any Commission inquiry or enforcement action. Finally, ABS-CBN states that it has implemented new license renewal measures that will ensure that all of its licenses will be renewed on a timely basis.

### III. DISCUSSION

6. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under and in accordance with a Commission granted authorization.<sup>10</sup> Section 25.121(c) of the Rules provides that the license term for an earth station is specified in the instrument of authorization.<sup>11</sup> Section 25.121(e) of the Rules requires the licensee of an earth station to file its renewal application "no earlier than 90 days, and no later than 30 days, before the expiration date of the license."<sup>12</sup> Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.<sup>13</sup>

7. As a Commission licensee, ABS-CBN was required to maintain its authorization in order to operate its earth station. ABS-CBN admitted that it operated earth station E970116 without Commission authority from the station's license expiration date of April 23, 2007 until January 23, 2008,

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<sup>7</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mr. S. Edmund Johnson, Engineer, ABS-CBN International, Inc. (Feb. 11, 2008).

<sup>8</sup> Letter from Maria Brown, Esq., Davis Wright Tremaine LLP, Counsel to ABS-CBN International, Inc., to Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Mar. 6, 2008) ("Response").

<sup>9</sup> Response at 4–6. See 47 C.F.R. § 1.80.

<sup>10</sup> 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

<sup>11</sup> 47 C.F.R. § 25.121(c).

<sup>12</sup> 47 C.F.R. § 25.121(e).

<sup>13</sup> 47 C.F.R. § 25.161.

the date that it received authorization to modify existing earth station E000584 to operate antennas previously associated with E970116. By operating earth station E970116 for 9 months without Commission authorization, ABS-CBN apparently violated Section 301 of the Act and Section 25.102(a) of the rules. ABS-CBN also acted in apparent violation of Section 25.121(e) of the rules by failing to file a timely renewal application for the station.

8. Section 503(b) of the Act<sup>14</sup> and Section 1.80(a) of the Rules<sup>15</sup> provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeated” means more than once.<sup>16</sup> Based on the record before us, it appears that ABS-CBN’s violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

9. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>17</sup> Having considered the statutory factors, as explained below, we propose a total forfeiture of \$5,200.

10. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and \$3,000 for failure to file required forms or information.<sup>18</sup> As the Commission has held, a licensee’s continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.<sup>19</sup> Accordingly, we herein propose separate forfeiture amounts for ABS-CBN’s separate violations.

11. Consistent with precedent, we propose a forfeiture in the amount of \$1,500 for ABS-CBN’s failure to timely file a renewal application within the time period specified in Section 25.121(e) of the Rules.<sup>20</sup> Additionally, we propose a forfeiture in the amount of \$5,000 for ABS-CBN’s unauthorized

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<sup>14</sup> 47 U.S.C. § 503(b).

<sup>15</sup> 47 C.F.R. § 1.80(a).

<sup>16</sup> See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act) (“*Southern California*”).

<sup>17</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>18</sup> 47 C.F.R. § 1.80(b).

<sup>19</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”). See also *La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2745 (Enf. Bur., Spectrum Enf. Div., 2007) (forfeiture paid) (“*La Carpa*”); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2006) (forfeiture paid) (“*Lazer*”); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

<sup>20</sup> See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture against a broadcaster for failure to timely file its renewal application). See also *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$1,500 forfeiture against (continued....))

operation of earth station E970116 after April 23, 2007.<sup>21</sup> In proposing a forfeiture of \$5,000 for the station's unauthorized operation, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.<sup>22</sup> Thus, we propose an aggregate forfeiture of \$6,500 (\$1,500 for failure to timely file a renewal application and \$5,000 for unauthorized operation).

12. As a Commission licensee, ABS-CBN is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules. We do find, however, that a downward adjustment of the proposed forfeiture from \$6,500 to \$5,200 is warranted due to ABS-CBN's history of overall compliance with the rules, but find no other basis for mitigation of the proposed forfeiture amount. Concerning ABS-CBN's claim that its failure to timely renew its license was inadvertent, the Commission has long held that a downward adjustment of an assessed forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors or unfamiliarity with the statutory or regulatory requirements.<sup>23</sup> ABS-CBN's claim of voluntary disclosure also fails. The Commission has considered voluntary disclosure to be a mitigating factor where the licensee brings a violation to the attention of the Commission immediately upon its discovery and before any Commission action is taken.<sup>24</sup> ABS-CBN learned about the expiration of its authorization on July 9, 2007,<sup>25</sup> but apparently did not notify the Commission until nearly four months later, on November 1, 2007, when it filed a modification application for one of its existing earth station licenses, E000584, to re-license the

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an earth station operator for failure to timely file a renewal application); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$1,500 forfeiture against an earth station operator for failure to timely file a renewal application).

<sup>21</sup> Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits assessment of a forfeiture for a violation that occurred more than one year before the issuance of a NAL, but this section does not bar consideration of prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC Rcd 193 (1967).

<sup>22</sup> See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a broadcast station for 14 months beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$5,000 forfeiture for operating an earth station for three years after the expiration of its license); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$5,000 forfeiture for operating an earth station for one year after the expiration of its license).

<sup>23</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

<sup>24</sup> See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004). See also *Side By-Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 901 (Enf. Bur., Spectrum Enf. Div., 2008), *forfeiture ordered*, 23 FCC Rcd 7393 (Enf. Bur., Spectrum Enf. Div., 2008), *review pending*; *Lazer*, 21 FCC Rcd at 8712; *Journal Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Journal Broadcast*") (forfeiture paid).

<sup>25</sup> We note that according to ABS-CBN, a consultant, acting on behalf of ABS-CBN, contacted the International Bureau's staff on July 11, 2007, to find out whether the expired license could be re-instated, but ABS-CBN provides no information as to whether the consultant voluntarily disclosed to International Bureau staff that ABS-CBN continued to operate the earth station.

antennas previously associated with E970116.<sup>26</sup> Finally, ABS-CBN's assertion that it did not create any interference with other licensees during the period of unauthorized operation is unavailing. It is well established that the absence of public harm is not considered a mitigating factor for a rule violation.<sup>27</sup>

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>28</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>29</sup> ABS-CBN International, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand two hundred dollars (\$5,200) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Commission's Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>30</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, ABS-CBN International, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201

<sup>26</sup> See *Steamboat Ski & Resort Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 15168 (Enf. Bur., Spectrum Enf. Div. 2007) (finding a downward adjustment was not warranted where licensee did not notify the Commission about the expiration of its authorization until 46 days later, when it filed a request for STA); *Journal Broadcast*, 20 FCC Rcd at 18214 (Enf. Bur., Spectrum Enf. Div., 2005) (rejecting a violator's claim of prompt, voluntary disclosure where a renewal application was filed nearly 60 days after the licensee learned that its earth station license had lapsed); *American Paging, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately a month after it was discovered).

<sup>27</sup> See *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975) (rejecting a broadcaster's claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint, stating that “[t]he Commission not only is concerned with actual interference, but is concerned with the potential for interference”); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476, 1478-79 (Enf. Bur., 2003) (rejecting a licensee's claim that the forfeiture should be downwardly adjusted because even though it operated booster stations at unauthorized sites with excessive power levels, its operations did not result in interference); *National Weather Networks*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3927 (Enf. Bur., Spectrum Enf. Div., 2006) (rejecting a licensee's claim that the forfeiture should be downwardly adjusted because its operation of an unauthorized earth station did not cause interference or disrupt other users).

<sup>28</sup> 47 U.S.C. § 503(b).

<sup>29</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>30</sup> 47 C.F.R. § 1.80.



or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. ABS-CBN will also send electronic notification on the date said payment is made to Jennifer.Burton@fcc.gov and JoAnn.Lucanik@fcc.gov.

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Maria Browne, Esq., Counsel to ABS-CBN International, Inc., Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006-3402.

**FEDERAL COMMUNICATIONS COMMISSION**

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau